BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL TO THE BOARD OF APPEALS

In re Application of: Steven R. Placek	)	Date: October 20, 2005
Serial N°: 10/806,859	)	Group Art Unit: 3617
Filed: 03/23/2004	)	Examiner: Swinehart, Edwin L.
For: **Adjustable Boat Platform Insert**	)	

CERTIFICATE OF SERVICE
I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450

Terry Lakos 11/9/05
Name: TERRY LAKOS Date

BRIEF ON APPEAL

Hon. Commissioner of Patents and Trademarks
Alexandria, VA 22313

Dear Sir:

This is an appeal from the Final Rejection, dated June 8, 2005 for the above identified application.

REAL PARTY IN INTEREST

The party(ies) named in the caption of this brief are the real parties of interest in this appeal.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant, appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATUS OF CLAIMS

Currently pending are claims 1-11 which were all finally rejected, which is herein under appeal.

STATEMENT OF AMENDMENTS

There have been no supplemental amendments filed after final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Referring to the Specification, page 5 through page 9, line 11 and to FIG. 1, an isometric view of the adjustable boat platform insert 10 installed upon a conventional V-bottom boat 15 according to a preferred embodiment of the present invention is disclosed. A forward seat 20 and a aft seat 25 are provided in their normally expected locations. The forward seat 20 and the aft seat 25 are envisioned to be of a normal bench type and can be made of aluminum, steel, wood, fiberglass or other commonly available material. A captive pin set 30 secures a platform 35 to a frame 40(not shown in this FIG.) at six locations, two at the forward corners, two at the middle, and two at the aft corners. The platform 35 provides a flat, level, stable and elevated surface from

which to perform fishing operations from. The overall function provided by said platform 35 is similar to that afforded by other types of fishing vessels such as a bass boat. A central seat 45 is provided in a central location affixed to a seat support stand 50 which is mounted to the frame 40 (not visible in this view). A plurality of storage compartments 55 are provided around the platform 35. A forward access hatch 60 is provided at the forward part of the platform 35, and a similar rear access hatch 65 is provided at the rear part of the platform 35. The rear access hatch 65 allows the use of the v-hull boat in a conventional manner by opening the hatches that allow the operator to operate the boat as they would normally operate without a platform. Finally, an anchor access hatch 70 is located at the rear part of the platform 35 near the outboard side. The anchor access hatch 70 is to allow the operator to access a anchor winch or a anchor.

Referring now to FIG. 2, a top view of the frame 40 is depicted. This FIG. more clearly depicts the underlying structure of the adjustable boat platform insert 10. A forward seat arm 80 is provided with a set of two affixed forward brace arms 85 which are connected to a lower first brace 90 via a set of first adjustable pins 95. The first adjustable pins 95 provides an adjustment point to allow the frame 40 to fit the conventional V-bottom boat 15 (not shown in this FIG.) of varying sizes. In a similar manner, a rear seat arm 100 is provided with a set of two affixed rear brace arms 105 which are connected to a lower second brace 110 via a set of second adjustable pins 115. It is envisioned that the forward brace arms 85, the lower first brace 90, the rear brace arms 105 and the lower second brace 110 is manufactured of tubular aluminum or other lightweight and strong material, thus allowing the components to fit inside one of another and allow for expansion as necessary. While the forward brace arms 85 and

the rear brace arms 105 allow for adjustment to suit seats of varying heights, a set of third adjustable pins 120 allow the lower first brace 90 and the lower second brace 110 to adjust in overall length to suit the distance between the forward seat 20 (as shown in FIG. 1) and aft seat 25 (as shown in FIG. 1). Each lower second brace 110 is affixed in its position from the other by a set of intermediate support brackets 125, which provide for structural stability and provide a base for the seat support stand 50. The seat support mount 134 would slide into the seat support stand 50 being adjusted by the fifth adjustable pin 138. An intermediate support 130 provides additional support for the platform 35 (not shown in this FIG.) Intermediate support 130 has the second extension member 137 that would slide in the same manner as the other adjustable parts into the first extension member 132 that extends off the lower second brace 110. Said supports are adjusted with fourth adjustable pins 136.

Referring next to FIG. 3, a side view of the frame 40 is disclosed. This FIG. more clearly shows the relationship of the frame 40 and the manner which it provides support for the platform 35. The set of six captive pins set 30 (of which only three are visible in this view) are clearly visible atop the forward seat arm 80, the intermediate support 130 and the rear seat arm 100. The forward brace arms 85 adjusts in and out of the lower first brace 90 as adjusted by the first adjustable pins 95. The rear brace arms 105 adjusts in and out of the lower second brace 110 as adjusted by the second adjustable pins 115. The intermediate support 130 is positioned by a fourth adjustable pins 136 that go through a second extension member and first extension member 132 that extend off of the intermediate support 130 and the lower second brace 110. These extensions extend upward with the intermediate support 130 sliding into the first

extension member 132 as the other adjustable parts. The seat support stand 50 extends upward through the intermediate support 130 with the intermediate support encircling the seat support stand 50 at it center with the seat support mount 134 sliding into the seat support stand 50 the fifth adjustable pin 138 passing through them above the intermediate support 130.

Referring now to FIG. 4, a top view of the platform 35 is disclosed. The storage compartments 55, of which four are provided in this embodiment, provide access to individual compartments such as storage lockers, thermally insulated coolers, live bait containers, fish storage coolers and the like. Their proximity to the outward portion of the platform 35 provide for easy access. A pair of compartment hinges 140 on each storage compartment lid 145 holds it captive and prevents the storage compartment lid 145 from being lost overboard. The forward access hatch 60 and the rear access hatch 65 serve as points to allow access to the underside of the platform 35 as bordered by the hull of the conventional V-bottom boat 15 (not shown in this FIG.) The forward access hatch 60 and the rear access hatch 65 are bifold type hatches, and are held captive by sets of hatch hinges 150. Finally, the anchor access hatch 70 provides storage for an anchor if so used, as aforementioned described. Finally, a set of elongated holes 152 are provided to secure the platform 35 to the captive pin set 30 (not shown in this FIG.) upon the forward seat arm 80, (not shown in this FIG.) the rear seat arm 100, (not shown in this FIG.) and the intermediate support 130 (not shown in this FIG.) The elongated nature of the elongated holes 152 allows for the varying nature of the captive pin set 30 (not shown in this FIG.) with respect to their spacing.

Referring finally to FIG. 5, a sectional view of the adjustable boat platform insert

10 as taken along a line I - I as seen in FIG. 3 is disclosed. This FIG. more clearly shows a below deck storage space 155 as aforementioned described. The forward access hatch 60, as hinged by their hatch hinges 150 are shown in a partially open state. In a likewise manner, the port and starboard storage compartment lid 145 are shown in a partially open state as provided by their compartment hinges 140. The storage compartment lid 145 provide access to a space contained by container walls 160. It is envisioned that the container walls 160 could be thermally insulated in the case of a cooler, or solid in nature, or of a mesh material to allow for drainage.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

In the Final Rejection of June 8, 2005, the Examiner rejected:

Claims 2, 3 and 5-7 under 35 U.S.C. 102(b) as being anticipated by Loffler;

Claims 1,2,4,8 and 9 under 35 U.S.C. 103(a) as being unpatentable over Tenneson in view of Johnson;

Claims 9-11 under 35 U.S.C. 103(a) as being unpatentable over Tenneson in view of Johnson and further in view of Anthonijsz.

ARGUMENT

1. Rejections under 35 U.S.C. 102(b)

In the Final Rejection of June 8, 2005, the Examiner rejected Claims 2, 3 and 5-7 under 35 U.S.C. 102(b) as being anticipated by Loffler. In undertaking to determine whether one reference anticipates the claim(s) of an

application under 35 U.S.C. § 102(a), § 102(b) or § 102(e), a primary tenet is that the reference must teach every element of the claim(s). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Each and every element of the claimed invention must be disclosed in a single prior art reference "arranged as in the claim." Lindemann Maschinenefabrik GmbH v. American Hoist & Derrick Co., 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984).

Claim 2 recites (quoting for convenience):

> 2. An adjustable boat platform insert for installation upon a V-bottom boat comprising:
> a platform for providing a flat, level, stable and elevated surface from which to perform fishing operations from;
> a frame attached to an inside of a V-bottom boat; and
> a captive pin set for securing said platform to said frame.

Thus, Claim 2 describes an adjustable boat platform that has a flat, level, stable platform, a frame attached to the inside of a V-bottom boat and a captive pin set securing the platform to the frame. In contrast, Loffler discloses a kit for attachment to a *multi-hull* watercraft in which the deck assumes the contour of the two watercraft that are joined by the deck. Loffler fails to disclose a frame that is attached to the inside of a single V-bottom boat. Therefore, Loffler fails to disclose every element of Claim 2, as arranged in Claim 2. Thus, Claim 2 is patentably distinguishable over Loffler. Withdrawal of this rejection is respectfully requested.

Claims 3, 5, 6 and 7 are also considered patentably distinguishable over Loffler because of direct or indirect dependence from an independent claim (Claim 2) patentably distinct from the prior art. Withdrawal of this rejection is respectfully requested.

2. Rejections under 35 U.S.C. 103(a)

Claims 1,2,4,8 and 9 under 35 U.S.C. 103(a) as being unpatentable over Tenneson in view of Johnson and Claims 9-11 under 35 U.S.C. 103(a) as being unpatentable over Tenneson in view of Johnson and further in view of Anthonijsz.

As amended, Claim 1 recites (quoting for convenience):

1. A universal, adjustable boat platform comprising:
a telescopically adjustable tubular framework coupled between bench seats of a V-hull boat; and
a vertically adjustable seat.

Thus, Claim 1 recites an apparatus having a platform, a telescopically adjustable frame coupled between the bench seats of a boat and a vertically adjustable seat. In contrast, Johnson discloses an auxiliary boat seat having a boat frame mounted between the *side walls* of the boat. Thus, Johnson fails to disclose the platform and the framework placed between bench seats of a boat as recited in Claim 1 of the present invention. Johnson fails to disclose every element of Claim 1, and further fails to disclose every element as arranged in Claim 1. Therefore, Claim 1 is patentably distinguishable over Johnson. Withdrawal of this rejection is respectfully requested.

As amended, Claim 8 recites (quoting for convenience):

8. A universal, adjustable platform comprising:
a telescopically adjustable tubular framework;

a vertically adjustable casting seat;
a platform for providing a flat, level, stable and elevated surface from which to perform fishing operations from; and
a captive pin set for securing said a platform said a frame.

Thus, Claim 8 recites an apparatus having a telescopically adjustable frame placed between the bench seats of a boat, a vertically adjustable seat, a flat and stable platform, and a captive pin set for securing the platform to the frame. In contrast, Johnson discloses an auxiliary boat seat having a boat frame mounted between the *side walls* of the boat. Thus, Johnson fails to disclose the platform as recited in Claim 8 of the present invention. Johnson fails to disclose every element of Claim 8, and further fails to disclose every element as arranged in Claim 8. Therefore, Claim 8 is patentably distinguishable over Johnson. Withdrawal of this rejection is respectfully requested.

Claims 9-11 are also considered patentably distinguishable over Johnson because of direct dependence from an independent claim (Claim 8) patentably distinct from the prior art.

In undertaking a determination of whether a reference, or a combination of references, renders a claim(s) obvious under 35 U.S.C. § 103(a), the examiner must show that the reference or combination of references teach or suggest every element of the claim(s) in question. MPEP § 706.02(j).

To reiterate, Claim 2 recites an adjustable boat platform that has a flat, level, stable platform, a frame attached to the inside of a V-bottom boat and a captive pin set securing the platform to the frame. In contrast, Johnson discloses an auxiliary boat

seat having a boat frame mounted between the *side walls* of the boat. Johnson fails to disclose, claim, teach or suggest a flat, level, stable platform as recited in Claim 2. Thus, Johnson fails to disclose, claim, teach or suggest every element of Claim 2 as required. Therefore, Claim 2 is patentably distinguishable over Johnson. Withdrawal of this rejection is respectfully requested.

Claim 4 is also considered patentably distinguishable over Loffler because of direct dependence from an independent claim (Claim 2) patentably distinct from the prior art. Withdrawal of this rejection is respectfully requested.

Claims 9, 10 and 11 are dependent from independent Claim 8, which is patentably distinct over Johnson for the reasons cited above, and incorporated by reference as if rewritten in its entirety. Thus, the combination of Johnson and Anthonijsz fail to disclose every element of the combination of Claim 8 with Claims 9, 10 and 11, respectively. Withdrawal of this rejection is respectfully requested.

In regard to the several rejections of the claims under 35 U.S.C. § 103(a), based upon the above arguments, it is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. § 103(a), in addition to any other art, relevant or not, is also inappropriate. However, by way of additional argument applicant wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based upon obviousness under 35 U.S.C. § 103(a), the cited references must teach every element of the claimed invention. Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. See Orthopedic Equipment Company, Inc. et al. v. United States, 217 USPQ 193, 199 (Fed.

Cir. 1983), wherein the Federal Circuit decreed, "Monday Morning Quarter Backing is quite improper when resolving the question of obviousness." Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

> "[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. When the prior art references require a selective combination to render obvious a subsequent claimed invention, there must be some reason for the selected combination other than the hindsight obtained from the claimed invention itself. Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985). There is nothing in the prior art or the Examiners arguments that would suggest the desirability or obviousness of making an adjustable platform for a boat having a telescopically adjustable frame upon which a flat platform is secured. Uniroyal, Inc. v. Rudkki-Wiley Corp., 837 F.2d 1044, 5 USPQ 2d 1432 (Fed. Cir. 1988). The examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art for selecting the design, other than the knowledge learned from the present disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (Fed. Cir. 1988); see also In re O'Farrell, 853 F.2d 894, 7 USPQ 2d 1673 (Fed. Cir. 1988).

To summarize, it appears that only in hindsight does it appear obvious to one of

ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old elements leads to an improper analysis of the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (Fed. Cir. 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (Fed. Cir. 1988).

Accordingly, the reversal of the Examiner by the honorable Board of Appeals is respectfully solicited.

Respectfully submitted,

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CLAIMS APPENDIX

The claims on appeal are as follows:

1. A universal, adjustable boat platform comprising:

a telescopically adjustable tubular framework coupled between bench seats of a V-hull boat; and

a vertically adjustable seat.

2. An adjustable boat platform insert for installation upon a V-bottom boat comprising:

a platform for providing a flat, level, stable and elevated surface from which to perform fishing operations from;

a frame attached to an inside of a V-bottom boat; and

a captive pin set for securing said platform to said frame.

3. The adjustable boat platform insert of Claim 2, wherein said captive pin set secures said platform to said frame at six locations, two at the forward corners, two at the middle, and two at the aft corners.

4. The adjustable boat platform insert of Claim 2, further comprising a central seat in a central location affixed to a seat support stand which is mounted to said frame.

5. The adjustable boat platform insert of Claim 2, further comprising a plurality of storage compartments around said platform.

6. The adjustable boat platform insert of Claim 2, wherein first adjustable pins provides an adjustment point to allow said frame to fit said V-bottom boat of varying sizes.

7. The adjustable boat platform insert of Claim 5, wherein said plurality of storage compartments are selected from the group comprising:

a forward access hatch; a rear access hatch; an anchor access hatch; port storage compartment; starboard storage compartment; and thermally insulated cooler.

8. A universal, adjustable platform comprising:

a telescopically adjustable tubular framework;

a vertically adjustable casting seat;

a platform for providing a flat, level, stable and elevated surface from which to perform fishing operations from; and

a captive pin set for securing said a platform said a frame.

9. The universal, adjustable platform of Claim 8, further comprising:

intermediate support connectable to said tubular framework for respectively connecting two said adjustable platforms side by side.

10. The universal, adjustable platform of Claim 8, further comprising intermediate supports comprise a double long footings equipped to mount platforms end to end.

11. The universal, adjustable platform of Claim 8, further comprising:

intermediate support connectable to said tubular framework for respectively connecting two said adjustable platforms side by side; and

intermediate supports comprise a double long footings equipped to mount platforms end to end.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDING

None